

PATENT
Attorney Docket No. ATT/2000-0219

REMARKS

In view of the following discussion, the Applicants submit that none of the claims now pending in the application are made obvious under the provisions of 35 U.S.C. § 103. Thus, the Applicants believe that all of these claims are now in allowable form.

I. CLAIM OBJECTIONS

The Examiner objected to claims 4 and 8 because of various informalities. In response, the Applicants herein amend claims 4 and 8 to correct the noted informalities. Specifically, in claim 4 "OR-303" was changed to read --GR-303 -- and in claim 8, "at least one feature includes at least of" was changed to read -- at least one feature includes at least one of --. As such, the Applicants respectfully request the objection be withdrawn.

II. REJECTION OF CLAIMS 1-5, 7-14 AND 16-18 UNDER 35 U.S.C. § 103

A. Claims 1-5, 7, 9-14, 16 and 18

The Examiner has rejected claims 1-5, 7, 9-14, 16 and 18 in the Office Action under 35 U.S.C. § 103 as being unpatentable over Lemley, et al. (U.S. Patent Publication 2002/0064152, published on May 30, 2002, hereinafter referred to as "Lemley") in view of Blum et al. (U.S. Patent Publication 2003/0048772, Published on March 13, 2003, hereinafter referred to as "Blum"). Applicants respectfully traverse the rejection.

The Applicants respectfully submit that the Examiner's use of the Lemley application as prior art against Applicants' invention is improper. More specifically, the Lemley application was filed on November 27, 2001. The present application was filed on September 28, 2001. Since the filing date of the present application precedes the filing date of the Lemley application, the Lemley application is not prior art to Applicants' invention.

Applicants note that the Lemley application claims priority to a provisional patent application filed on November 28, 2000. Under 35 U.S.C. §102(e), the filing date of a provisional patent application may be the effective filing date of a United States patent

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claiming priority to such provisional patent application only to the extent that such provisional patent application supports the subject matter used to make the rejection. See MPEP §706.02(f). Thus, the Examiner must provide some evidence that the Lemley provisional application supports the subject matter of the published Lemley application used in the rejection. Specifically, the Applicants are questioning whether the Lemley provisional application contains the subject matter used by the Examiner in the rejection.

Notably, there is no prohibition against the inclusion of subject matter in a non-provisional patent application that was not described in a prior provisional application to which the non-provisional application claims priority. That is, a non-provisional patent application may include new material not described in the provisional application. It is axiomatic that such new material does not receive the benefit of the provisional application. Applicants are not aware of any law, rule, or otherwise that all subject matter described in a non-provisional application is presumed to be described in a provisional application to which the non-provisional application claims priority. Thus, it is possible that the subject matter in the published Lemley application relied on by the Examiner is not described in the Lemley provisional application (i.e., the subject matter in the published Lemley application relied on by the Examiner may constitute new material with respect to the Lemley provisional application). In such a case, the cited subject matter would not constitute prior art to Applicants' invention. Therefore, in order to set forth a *prima facie* case, the Examiner must provide evidence (e.g., a copy of the Lemley provisional application with specific citation to the provisional application supporting the Examiner's rejection) that the Lemley provisional application supports the subject matter of the published Lemley application used by the Examiner in the rejection. Thus, the use of Lemley in combination with Blum in this rejection is improper. As such, without such evidence and the fact that Blum by itself does not make Applicants' invention obvious, the Applicants respectfully request the rejection be withdrawn.

B. Claims 8 and 17

The Examiner has rejected claims 8 and 17 in the Office Action under 35 U.S.C.

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§ 103 as being unpatentable over Lemley in view of Blum and in further view of Admitted Prior Art. Applicants respectfully traverse the rejection.

As discussed above, the Applicants respectfully submit that the Examiner's use of the Lemley application as prior art against Applicants' invention is improper. More specifically, the Lemley patent was filed on November 27, 2001. The present application was filed on September 28, 2001. Since the filing date of the present application precedes the filing date of the Lemley application, the Lemley application is not prior art to Applicants' invention.

Applicants note that the Lemley application claims priority to a provisional patent application filed on November 28, 2000. Under 35 U.S.C. §102(e), the filing date of a provisional patent application may be the effective filing date of a United States patent claiming priority to such provisional patent application only to the extent that such provisional patent application supports the subject matter used to make the rejection. See MPEP §706.02(f). Thus, the Examiner must provide some evidence that the Lemley provisional application supports the subject matter of the published Lemley application used in the rejection. Specifically the Applicants are questioning whether the Lemley provisional application contains the subject matter used by the Examiner in the rejection.

Notably, there is no prohibition against the inclusion of subject matter in a non-provisional patent application that was not described in a prior provisional application to which the non-provisional application claims priority. That is, a non-provisional patent application may include new material not described in the provisional application. It is axiomatic that such new material does not receive the benefit of the provisional application. Applicants are not aware of any law, rule, or otherwise that all subject matter described in a non-provisional application is presumed to be described in a provisional application to which the non-provisional application claims priority. Thus, it is possible that the subject matter in the published Lemley application relied on by the Examiner is not described in the Lemley provisional application (i.e., the subject matter in the published Lemley application relied on by the Examiner may constitute new material with respect to the Lemley provisional application). In such a case, the cited subject matter would not constitute prior art to Applicants' invention. Therefore, in order

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to set forth a prima facie case, the Examiner must provide evidence (e.g., a copy of the Lemley provisional application with specific citation to the provisional application supporting the Examiner's rejection) that the Lemley provisional application supports the subject matter of the published Lemley application used by the Examiner in the rejection. As such, without such evidence, and the fact that Blum and the alleged "admitted prior art" by themselves do not make Applicants' invention obvious, the Applicants respectfully request the rejection be withdrawn.

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CONCLUSION

Thus, the Applicants submit that all of these claims now fully satisfy the requirements of 35 U.S.C. § 103. Consequently, the Applicants believe that all these claims are presently in condition for allowance. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly requested.

If, however, the Examiner believes that there are any unresolved issues requiring the issuance of a final action in any of the claims now pending in the application, it is requested that the Examiner telephone Mr. Kin-Wah Tong, Esq. at (732) 530-9404 so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,



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